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11 CHEX SYSTEMS, INC.. and
BANK OF AMERICA, N.A.
12

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 BRIAN HOROWITZ,

16 Plaintiff,

17 vs.

18 CHEX SYSTEMS, INC., a foreign
corporation, and BANK OF AMERICA,
19 N.A., a foreign corporation,

20 Defendants.
21

Case No. 8:22-cv-02002-DFM

STIPULATED PROTECTIVE ORDER

22 1. GOOD CAUSE STATEMENT

23 Plaintiff Brian Horowitz (“Plaintiff”) and defendants Chex Systems, Inc.
24 (“Chex”) and Bank of America (“BANA”) believe this case may involve
25 documents, materials, or information that needs special protection from public
26 disclosure and from use for any purpose other than prosecution of this action is
27 warranted. It may involve confidential and proprietary materials and information
28 consisting of, among other things, Chex and BANA’s confidential business or

1 financial information, information regarding Chex and BANA's confidential
2 business practices, or other commercial information (including information
3 implicating privacy rights of third parties) that is generally unavailable to the public,
4 or which may be privileged or otherwise protected from disclosure under state or
5 federal statutes, court rules, case decisions, or common law. Finally, it may involve
6 inadvertent production of information subject to the attorney-client privilege,
7 attorney work product doctrine, or other similar evidentiary privileges and
8 protections.

9 Accordingly, to expedite the flow of information, to facilitate the prompt
10 resolution of disputes over confidentiality of discovery materials, to adequately
11 protect information the parties are entitled to keep confidential, to ensure that the
12 parties are permitted reasonable necessary uses of such material in preparation for
13 and in the conduct of trial, to address their handling at the end of the litigation, and
14 serve the ends of justice, a protective order for such information is justified in this
15 matter. It is the intent of the parties that information will not be designated as
16 confidential for tactical reasons and that nothing be so designated without a good
17 faith belief that it has been maintained in a confidential, non-public manner, and
18 there is good cause why it should not be part of the public record of this case.

19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve
21 production of confidential, proprietary, or private information for which special
22 protection from public disclosure and from use for any purpose other than
23 prosecuting this litigation may be warranted. Accordingly, the parties hereby
24 stipulate to and petition the court to enter the following Stipulated Protective Order.
25 The parties acknowledge that this Order does not confer blanket protections on all
26 disclosures or responses to discovery and that the protection it affords from public
27 disclosure and use extends only to the limited information or items that are entitled
28 to confidential treatment under the applicable legal principles. The parties further

1 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
2 Order does not entitle them to file confidential information under seal; Local Rule
3 79-5 sets forth the procedures that must be followed and the standards that will be
4 applied when a party seeks permission from the court to file material under seal.

5 2. DEFINITIONS

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation
7 of information or items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House
12 Counsel (as well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or
14 items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.5 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, or maintained (including,
18 among other things, testimony, transcripts, and tangible things), that are produced or
19 generated in disclosures or responses to discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this action.

23 2.7 House Counsel: attorneys who are employees of a party to this action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.8 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

28 2.9 Outside Counsel of Record: attorneys who are not employees of a party

1 to this action but are retained to represent or advise a party to this action and have
2 appeared in this action on behalf of that party or are affiliated with a law firm which
3 has appeared on behalf of that party.

4 2.10 Party: any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this action.

9 2.12 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.13 Protected Material: any Disclosure or Discovery Material that is
14 designated as "CONFIDENTIAL."

15 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or
21 compilations of Protected Material; and (3) any testimony, conversations, or
22 presentations by Parties or their Counsel that might reveal Protected Material.
23 However, the protections conferred by this Stipulation and Order do not cover the
24 following information: (a) any information that is in the public domain at the time of
25 disclosure to a Receiving Party or becomes part of the public domain after its
26 disclosure to a Receiving Party as a result of publication not involving a violation of
27 this Order, including becoming part of the public record through trial or otherwise;
28 and (b) any information known to the Receiving Party prior to the disclosure or

1 obtained by the Receiving Party after the disclosure from a source who obtained the
2 information lawfully and under no obligation of confidentiality to the Designating
3 Party. Any use of Protected Material at trial shall be governed by a separate
4 agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs. Final disposition shall be
9 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
10 or without prejudice; and (2) final judgment herein after the completion and
11 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
12 including the time limits for filing any motions or applications for extension of time
13 pursuant to applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under
17 this Order must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The Designating Party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify – so that other portions of the material, documents,
21 items, or communications for which protection is not warranted are not swept
22 unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified or that have been made for an improper
25 purpose (e.g., to unnecessarily encumber or retard the case development process or
26 to impose unnecessary expenses and burdens on other parties) expose the
27 Designating Party to sanctions.

28 If it comes to a Designating Party's attention that information or items that it

1 designated for protection do not qualify for protection, that Designating Party must
2 promptly notify all other Parties that it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in
4 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
6 under this Order must be clearly so designated before the material is disclosed or
7 produced.

8 Designation in conformity with this Order requires:

9 (a) For information in documentary form (e.g., paper or electronic documents,
10 but excluding transcripts of depositions or other pretrial or trial proceedings), that
11 the Producing Party affix the legend “CONFIDENTIAL” to each page that contains
12 protected material. If only a portion or portions of the material on a page qualifies
13 for protection, the Producing Party also must clearly identify the protected portion(s)
14 (e.g., by making appropriate markings in the margins).

15 A Party or Non-Party that makes original documents or materials available for
16 inspection need not designate them for protection until after the inspecting Party has
17 indicated which material it would like copied and produced. During the inspection
18 and before the designation, all of the material made available for inspection shall be
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
20 documents it wants copied and produced, the Producing Party must determine which
21 documents, or portions thereof, qualify for protection under this Order. Then, before
22 producing the specified documents, the Producing Party must affix the
23 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a
24 portion or portions of the material on a page qualifies for protection, the Producing
25 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
26 markings in the margins).

27 (b) for testimony given in deposition or in other pretrial or trial proceedings,
28 that the Designating Party identify on the record, before the close of the deposition,

1 hearing, or other proceeding, all protected testimony.

2 (c) for information produced in some form other than documentary and for
3 any other tangible items, that the Producing Party affix in a prominent place on the
4 exterior of the container or containers in which the information or item is stored the
5 legend “CONFIDENTIAL.” If only a portion or portions of the information or item
6 warrant protection, the Producing Party, to the extent practicable, shall identify the
7 protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party’s right to secure protection under this Order for such material.
11 Upon timely correction of a designation, the Receiving Party must make reasonable
12 efforts to assure that the material is treated in accordance with the provisions of this
13 Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time. Unless a prompt challenge to a
17 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
18 substantial unfairness, unnecessary economic burdens, or a significant disruption or
19 delay of the litigation, a Party does not waive its right to challenge a confidentiality
20 designation by electing not to mount a challenge promptly after the original
21 designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process by providing written notice of each designation it is challenging
24 and describing the basis for each challenge. To avoid ambiguity as to whether a
25 challenge has been made, the written notice must recite that the challenge to
26 confidentiality is being made in accordance with this specific paragraph of the
27 Protective Order. The parties shall attempt to resolve each challenge in good faith
28 and must begin the process by conferring directly (in voice to voice dialogue; other

1 forms of communication are not sufficient) within 14 days of the date of service of
2 notice. In conferring, the Challenging Party must explain the basis for its belief that
3 the confidentiality designation was not proper and must give the Designating Party
4 an opportunity to review the designated material, to reconsider the circumstances,
5 and, if no change in designation is offered, to explain the basis for the chosen
6 designation. A Challenging Party may proceed to the next stage of the challenge
7 process only if it has engaged in this meet and confer process first or establishes that
8 the Designating Party is unwilling to participate in the meet and confer process in a
9 timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
11 court intervention, the Designating Party shall file and serve a motion to retain
12 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rules
13 37 and 79-5, if applicable) within 21 days of the initial notice of challenge or within
14 14 days of the parties agreeing that the meet and confer process will not resolve
15 their dispute, whichever is earlier. Each such motion must be accompanied by a
16 competent declaration affirming that the movant has complied with the meet and
17 confer requirements imposed in the preceding paragraph. Failure by the Designating
18 Party to make such a motion including the required declaration within 21 days (or
19 14 days, if applicable) shall automatically waive the confidentiality designation for
20 each challenged designation. In addition, the Challenging Party may file a motion
21 challenging a confidentiality designation at any time if there is good cause for doing
22 so, including a challenge to the designation of a deposition transcript or any portions
23 thereof. Any motion brought pursuant to this provision must be accompanied by a
24 competent declaration affirming that the movant has complied with the meet and
25 confer requirements imposed by the preceding paragraph.

26 The burden of persuasion in any such challenge proceeding shall be on the
27 Designating Party. Frivolous challenges, and those made for an improper purpose
28 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may

1 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 2 the confidentiality designation by failing to file a motion to retain confidentiality as
 3 described above, all parties shall continue to afford the material in question the level
 4 of protection to which it is entitled under the Producing Party's designation until the
 5 court rules on the challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 8 disclosed or produced by another Party or by a Non-Party in connection with this
 9 case only for prosecuting, defending, or attempting to settle this litigation. Such
 10 Protected Material may be disclosed only to the categories of persons and under the
 11 conditions described in this Order. When the litigation has been terminated, a
 12 Receiving Party must comply with the provisions of section 13 below (FINAL
 13 DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a
 15 location and in a secure manner that ensures that access is limited to the persons
 16 authorized under this Order.

17 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
 18 otherwise ordered by the court or permitted in writing by the Designating Party, a
 19 Receiving Party may disclose any information or item designated
 20 "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
 22 employees of said Outside Counsel of Record to whom it is reasonably necessary to
 23 disclose the information for this litigation and who have signed the
 24 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
 25 A;

26 (b) the officers, directors, and employees (including House Counsel) of the
 27 Receiving Party to whom disclosure is reasonably necessary for this litigation and
 28 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock
6 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
7 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to
11 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
12 by the court. Pages of transcribed deposition testimony or exhibits to depositions
13 that reveal Protected Material must be separately bound by the court reporter and
14 may not be disclosed to anyone except as permitted under this Stipulated Protective
15 Order.

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
19 PRODUCED IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation
21 that compels disclosure of any information or items designated in this action as
22 “CONFIDENTIAL,” that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification shall
24 include a copy of the subpoena or court order;

25 (b) promptly notify in writing the party who caused the subpoena or order to
26 issue in the other litigation that some or all of the material covered by the subpoena
27 or order is subject to this Protective Order. Such notification shall include a copy of
28 this Stipulated Protective Order; and

1 (c) cooperate with respect to all reasonable procedures sought to be pursued
2 by the Designating Party whose Protected Material may be affected.

3 If the Designating Party timely seeks a protective order, the Party served with
4 the subpoena or court order shall not produce any information designated in this
5 action as “CONFIDENTIAL” before a determination by the court from which the
6 subpoena or order issued, unless the Party has obtained the Designating Party’s
7 permission. The Designating Party shall bear the burden and expense of seeking
8 protection in that court of its confidential material – and nothing in these provisions
9 should be construed as authorizing or encouraging a Receiving Party in this action
10 to disobey a lawful directive from another court.

11 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
12 PRODUCED IN THIS LITIGATION

13 (a) The terms of this Order are applicable to information produced by a Non-
14 Party in this action and designated as “CONFIDENTIAL.” Such information
15 produced by Non-Parties in connection with this litigation is protected by the
16 remedies and relief provided by this Order. Nothing in these provisions should be
17 construed as prohibiting a Non-Party from seeking additional protections.

18 (b) In the event that a Party is required, by a valid discovery request, to
19 produce a Non-Party’s confidential information in its possession, and the Party is
20 subject to an agreement with the Non-Party not to produce the Non-Party’s
21 confidential information, then the Party shall:

22 (1) promptly notify in writing the Requesting Party and the Non-Party that
23 some or all of the information requested is subject to a confidentiality agreement
24 with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
26 Order in this litigation, the relevant discovery request(s), and a reasonably specific
27 description of the information requested; and

28 (3) make the information requested available for inspection by the Non-Party.

1 (c) If the Non-Party fails to object or seek a protective order from this court
2 within 14 days of receiving the notice and accompanying information, the Receiving
3 Party may produce the Non-Party's confidential information responsive to the
4 discovery request. If the Non-Party timely seeks a protective order, the Receiving
5 Party shall not produce any information in its possession or control that is subject to
6 the confidentiality agreement with the Non-Party before a determination by the
7 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
8 expense of seeking protection in this court of its Protected Material.

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
11 Protected Material to any person or in any circumstance not authorized under this
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
15 persons to whom unauthorized disclosures were made of all the terms of this Order,
16 and (d) request such person or persons to execute the "Acknowledgment and
17 Agreement to Be Bound" that is attached hereto as Exhibit A.

18 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
19 OTHERWISE PROTECTED MATERIAL

20 When a Producing Party gives notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
23 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
24 may be established in an e-discovery order that provides for production without
25 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
26 as the parties reach an agreement on the effect of disclosure of a communication or
27 information covered by the attorney-client privilege or work product protection, the
28 parties may incorporate their agreement in the stipulated protective order submitted

1 to the court.

2 12. MISCELLANEOUS

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
4 person to seek its modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in this
8 Stipulated Protective Order. Similarly, no Party waives any right to object on any
9 ground to use in evidence of any of the material covered by this Protective Order.

10 12.3 Filing Protected Material. Without written permission from the
11 Designating Party or a court order secured after appropriate notice to all interested
12 persons, a Party may not file in the public record in this action any Protected
13 Material. A Party that seeks to file under seal any Protected Material must comply
14 with Civil Local Rule 79-5. Protected Material may only be filed under seal
15 pursuant to a court order authorizing the sealing of the specific Protected Material at
16 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
17 request establishing that the Protected Material at issue is privileged, protectable as
18 a trade secret, or otherwise entitled to protection under the law. If a Receiving
19 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
20 5 is denied by the court, then the Receiving Party may file the information in the
21 public record pursuant to Civil Local Rule 79-5 unless otherwise instructed by the
22 court.

23 13. FINAL DISPOSITION

24 Within 60 days after the final disposition of this action, as defined in
25 paragraph 4, each Receiving Party must return all Protected Material to the
26 Producing Party or destroy such material. As used in this subdivision, "all Protected
27 Material" includes all copies, abstracts, compilations, summaries, and any other
28 format reproducing or capturing any of the Protected Material. Whether the

1 Protected Material is returned or destroyed, the Receiving Party must submit a
2 written certification to the Producing Party (and, if not the same person or entity, to
3 the Designating Party) by the 60 day deadline that (1) identifies (by category, where
4 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
5 that the Receiving Party has not retained any copies, abstracts, compilations,
6 summaries or any other format reproducing or capturing any of the Protected
7 Material. Notwithstanding this provision, Counsel are entitled to retain an archival
8 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
9 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
10 work product, and consultant and expert work product, even if such materials
11 contain Protected Material. Any such archival copies that contain or constitute
12 Protected Material remain subject to this Protective Order as set forth in Section 4
13 (DURATION).

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3 DATED: February 14, 2023

4 /s/ Mark Javitch

5 Attorney for Plaintiff Brian Horowitz

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7 DATED: February 27, 2023

8 /s/ Samuel R. Melamed

9 Attorney for Defendants Chex Systems, Inc. and Bank of America, N.A.

10
11 I, Samuel R. Melamed, am the ECF user who filed this Stipulated Protective
12 Order. I attest that Mark Javitch, on whose behalf the filing is submitted, concurs in
13 the filing's content and has authorized the filing. /s/ Samuel R. Melamed

14
15 PURSUANT TO STIPULATION, and GOOD CAUSE appearing, IT IS SO
16 ORDERED.

17
18 DATED: March 8, 2023

19 
20 _____
21 Douglas F. McCormick
22 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the
United States District Court for the Northern District of California on [date] in the
case of _____ **[insert formal name of the case and the number and
initials assigned to it by the court]**. I agree to comply with and to be bound by all
the terms of this Stipulated Protective Order and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature of
contempt. I solemnly promise that I will not disclose in any manner any information
or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Northern District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action
or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____